

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

JOSE BULMARO TAMAYO-MARTINEZ, §  
#11298078

VS. § CIVIL ACTION NO. 6:07cv50  
CRIMINAL ACTION NO. 6:05cr46  
UNITED STATES OF AMERICA §

ORDER ADOPTING REPORT AND RECOMMENDATION

On March 13, 2006, Petitioner was sentenced in criminal case 6:05cr46. Pursuant to 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges, the motion was referred to United States Magistrate Judge Judith K. Guthrie.

The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case. The Report recommended that Petitioner's motion to vacate/correct illegal sentence pursuant to 28 U.S.C. § 2255 be granted to the extent that he receive an out-of-time appeal, and in all other regards the motion to vacate/correct illegal sentence be dismissed without prejudice. No objections were filed.

This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

**ORDERS, ADJUDGES, and DECREES** that Petitioner's motion to vacate/correct illegal sentence pursuant to 28 U.S.C. § 2255 is **GRANTED** to the extent that he receive an out-of-time appeal, and in all other regards the motion to vacate/correct illegal sentence is **DISMISSED WITHOUT PREJUDICE**. The ten day deadline for filing a notice of appeal begins to run at the time the judgment is entered.

The Court further

**ORDERS** that all motions not previously ruled on are denied.

**So ORDERED and SIGNED this 31st day of March, 2008.**

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS**  
**UNITED STATES DISTRICT JUDGE**